

State of Colorado



Bill Owens
Governor

Stacy L. Worthington
Board Director

DPA

Department of Personnel
& Administration

State Personnel Board
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Meeting Minutes September 16, 2003

The State Personnel Board met in public session on Tuesday, September 16, 2003, at the Colorado Department of Transportation, 4201 East Arkansas Avenue, Second Floor Auditorium, Denver, Colorado 80222.

The meeting was called to order by Chair Joyce Lottner at approximately 9:00 a.m. In addition to Ms. Lottner, Board members Elizabeth Salkind, Linda Siderius, and John Zakhem were present. Board member Diedra Garcia was absent.

Stacy L. Worthington, Board Director; First Assistant Attorney General Richard Forman, Board Counsel; and Jane Sprague, Legal Assistant, were present.

I. REQUESTS FOR RESIDENCY WAIVERS

A. September 1, 2003 Report on Residency Waivers

Director Worthington raised as an issue the possibility of granting a residency waiver request for longer than a year if requests for the same position repeatedly come before the Board. The Board members expressed their preference for granting a residency waiver request for one year without exceptions.

II. PENDING MATTERS - MOTIONS

A. Anwar Hussein v. Regents of the University of Colorado, University of Colorado at Colorado Springs, State Personnel Board case number 2002B041.

Ms. Lottner moved to deny Complainant's Exceptions to the Preliminary Recommendation of the Administrative Law Judge. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Zakhem, and Ms. Lottner. Ms. Salkind

voted in opposition to the motion. Ms. Siderius abstained from voting. Ms. Garcia was absent.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD

There were no Initial Decisions or Other Final Orders of the Administrative Law Judges or the Director on appeal to the Board this month.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING

- A. Joseph Encinias v. Department of Transportation, State Personnel Board case number 2003B078.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia was absent.

- B. Joyce Miller v. Department of Personnel, Division of Finance & Procurement, Office of State Controller, State Personnel Board case number 2003G010.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Mr. Zakhem, and Ms. Lottner. Ms. Siderius abstained from voting. Ms. Garcia was absent.

- C. Erica Glass v. Department of Human Services, Food Distribution Unit, State Personnel Board case number 2003G105.

Ms. Siderius moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia was absent.

- D. Catherine Thurston v. Department of Revenue, Taxpayer Service, State Personnel Board case number 2003G097.

Ms. Siderius moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia was absent.

- E. Chris Lange v. Trustees of the State Colleges in Colorado, Mesa State College, State Personnel Board case number 2003G059.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Director and deny the petition for hearing. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia was absent.

- F. Daniel Manning v. Department of Higher Education, Auraria Higher Education Center, Division of Facilities Management, State Personnel Board case number 2002B117.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Director and deny the petition for hearing. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia was absent.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR

There were no Initial Decisions or Other Final Orders of the Administrative Law Judges or the Director before the Board this month.

VI. REVIEW OF THE MINUTES FROM THE AUGUST 19, 2003 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Ms. Salkind moved to approve the minutes of the August 19, 2003 meeting as submitted. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Mr. Zakhem, and Ms. Lottner. Ms. Garcia was absent. Ms. Siderius abstained because she was not present at that meeting.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS AUGUST 19, 2003 PUBLIC MEETING:

- A. Perry Venard v. Department of Corrections, Arkansas Valley Correctional Facility, State Personnel Board case number 2000B114.

The Board voted to deny both motions made by Complainant (motion for a new hearing or remand and the taking of supplemental testimony). In a separate vote, the Board voted to affirm and ratify the Order of the State Personnel Board dated September 25, 2001, adopting the findings of fact and conclusions of law of the Administrative Law Judge in the Initial Decision of the Administrative Law Judge.

- B. Zeldra Bryant v. Regents of the University of Colorado, University of Colorado Health Science Center, State Personnel Board case number 2003B089.

The Board voted to adopt the Preliminary Recommendation of the Director and deny the petition for hearing.

- C. Anwar Hussein v. Regents of the University of Colorado, University of Colorado at Colorado Springs, State Personnel Board case number 2002B041.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

Monica Cortez-Sangster reported on behalf of Troy A. Eid, Personnel Director. Officials from the Department of Personnel and Administration (DPA) met with Bill Hanna, the lobbyist for the Colorado Association of Public Employees (CAPE) and the United Veterans Committee, regarding the Civil Service Reform Commission, which will be submitting its final report to Governor Owens on October 1, 2003. Paul Farley and Mr. Eid also met with the governor and will be meeting with the Colorado Commission on Higher Education on September 17, 2003. Director Worthington added that the last meeting of the Civil Service Reform Commission is scheduled for September 30, 2003, and that the working groups' recommendations have been published. Changes will be made to the final report based on the large quantity of input. Ms. Cortez-Sangster stated that a public release of the Commission's report was being planned for next month with Governor Owens and former Governor Lamm; a tour of the state was also being planned; and Mr. Eid has expressed his hope that the Board will endorse and support the final report of the Commission. Director Worthington agreed to provide a schedule of the state tour to the Board.

Ms. Cortez-Sangster also reported that Open Enrollment was scheduled for October 20 through November 7, 2003, and that it would be entirely online, as mandated by legislative directive. After a Board member expressed concern for

people who have no computer access, Ms. Cortez-Sangster stated that a COFRS training room will be set up downtown and that computers around the state would be accessible to employees who have no direct computer access.

Another area of the Director's Report was the Performance Pay Task Force comprised of DPA staff and a panel of advisors. The Task Force is to make recommendations by the end of October, for example, one proposed change to performance pay is to award it only to levels 3 and 4.

Finally, Ms. Cortez-Sangster announced the retirement of two DPA personnel: Janet Cotter, the Benefits and Risk Manager; and Ken Allikian, of Human Resources. Ms. Lottner indicated that the Board would send a note to Ms. Cotter congratulating her on her retirement; a note has already been sent to Mr. Allikian.

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Budget Report and Revenue and Expense Report
- Cases Scheduled for Preliminary Review
- Cases on Appeal to the Board and to Appellate Courts
- Order Affirmed in Tucker v. Department of Public Health and Environment, State Personnel Board case number 2002B001, Court of Appeals No. 02CA1721
- Rulemaking to Comply with Statute
 - Notice of Public Hearing to Consider Adoption of Permanent Rules
 - Notice of Public Hearing to Consider Adoption of Permanent Administrative Procedures
 - Proposed Changes to Director's Administrative Procedure
 - Statement of Basis, Specific Statutory Authority, and Purpose for the State Personnel Director's Adoption of Permanent Administrative Procedures P-3-21, P-3-37, P-3-51, P-3-52, P-3-53, P-4-8, P-4-20, P-5-10
- Changes to the Whistleblower Statute - Draft Statute

The Board discussed various proposed changes in a draft of the statute prepared and circulated to various stakeholders by Director Worthington, who went through each section of revision and clarified the purpose behind each of the changes with the Board. Ms. Worthington cited to delay, expense, and the lack of any findings of reasonable basis as the reasons behind the proposal to eliminate investigation by the Office of the State Personnel Director. The Board then discussed and explored the investigatory process and report contents, including calling upon Pat Romero from DPA to describe what the investigators look for: (1) what was disclosed; (2) if there were two disclosures; and (3) what discipline was tied to the disclosure. Board Counsel Forman also advised the

Board in this area, informing them that a recent Board case, Rura v. Department of Higher Education, State Board of Agriculture, Colorado State University, State Personnel Board Case Number 2001G117, is scheduled for oral argument in the Court of Appeals on October 20, 2003, on the issue of whistleblower disclosure. Mr. Forman also stated that the intent of the statute is to protect whistleblowers and to encourage employees to come forward with information. The purpose of the investigation by DPA, the burden of proof on a whistleblower to show abuses in government absent an investigation, and the importance of fact-finding by the investigator were other topics covered by the Board in its discussion. Having determined that the Board's current preference is to retain the investigation by DPA, Ms. Worthington proposed that she work with Pat Romero to see "what makes sense" regarding investigation by DPA and report to the Board.

In addition to the above, Director Worthington discussed with the Board the subject of fees paid by appellants to prepare the record of Board proceedings. The current \$50 is a flat fee regardless of the size of the record; one proposal is to charge per page and is based on the length of the record. She requested that the Board authorize her to take action regarding those appellants who do not readily pay for the record preparation. Mr. Zakhem moved to authorize the Director to take whatever action deemed necessary to collect a reasonable fee from appellants for generating the record in appeals of Initial Decisions and other final Orders, including the authority to issue an order to show cause why a matter should not be dismissed for lack of payment for the Board record, to dismiss an appeal if no response to an order to show cause is filed, and to waive the fee of an indigent party for preparation of the record. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia was absent.

B. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

The Board did not go into Executive Session and adjourned by consensus.

X. EXECUTIVE SESSION

A. Case Status Report

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Having no more business, the meeting adjourned by consensus.

APPROVED THIS 21st DAY OF OCTOBER, 2003.

Joyce Lottner, Chair

John Zakhem, Vice Chair

Elizabeth Salkind, Member

Linda Siderius, Member